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proposed project have a significant adverse effect on fish and wildlife, or on wetlands or any other wildlife habitat, especially those of endangered species? How significant is this impact in relation to the local or regional critical habitat needs? Have actions to mitigate habitat destruction been incorporated into the project? Has the recipient properly consulted with appropriate State and Federal fish, game and wildlife agencies and with the U.S. Fish and Wildlife Service? What were their replies?

(13) Describe any feasible alternatives to the proposed project in terms of environmental impacts, commitment of resources, public interest and costs and why they were not proposed.

(14) Describe other measures not discussed previously that are necessary to mitigate adverse environmental impacts resulting from the implementation of the proposed project.

Subpart I—Grants for Construction of Treatment Works

AUTHORITY: Secs. 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 219, 304(d)(3), 313, 501, 502, 511 and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

SOURCE: 49 FR 6234, Feb. 17, 1984, unless otherwise noted.

§ 35.2000 Purpose and policy.

(a) The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

(b) This subpart supplements EPA's Uniform Relocation and Real Property Acquisition Policies Act regulation (part 4 of this chapter), its National Environmental Policy Act (NEPA) regulation (part 6 of this chapter), its public participation regulation (part 25 of this chapter), its intergovernmental review regulation (part 29 of this chapter), its general grant regulation (part 30 of this chapter), its debarment regulation (part 32 of this chapter), and its procurement under assistance regulation (part 33 of this chapter), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. EPA may also find it necessary to publish other requirements applicable to the con-

struction grants program in response to Congressional action and executive orders.

(c) EPA's policy is to delegate administration of the construction grants program on individual projects to State agencies to the maximum extent possible (see subpart F). Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates review of projects for compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224) EPA will, when substantial Federal involvement is anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 1200 Pennsylvania Ave., NW., room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500-21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH-547) or from any EPA Regional Office.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) *Act.* The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(2) *Ad valorem tax.* A tax based upon the value of real property.

(3) *Allowance*. An amount based on a percentage of the project's allowable building cost, computed in accordance with appendix B.

(4) *Alternative technology*. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; and methane recovery.

(5) *Alternative to conventional treatment works for a small community*. For purposes of §§ 35.2020 and 35.2032, alternative technology used by treatment works in small communities include alternative technologies defined in paragraph (b)(4), as well as, individual and onsite systems; small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(6) *Architectural or engineering services*. Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(7) *Best Practicable Waste Treatment Technology (BPWTT)*. The cost-effective technology that can treat wastewater, combined sewer overflows and non-excessive infiltration and inflow in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

- (i) 40 CFR part 133—secondary treatment of wastewater;
- (ii) 40 CFR part 125, subpart G—marine discharge waivers;
- (iii) 40 CFR 122.44(d)—more stringent water quality standards and State standards; or
- (iv) 41 FR 6190 (February 11, 1976)—Alternative Waste Management Tech-

niques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(8) *Building*. The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(9) *Building completion*. The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.

(10) *Collector sewer*. The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service “Y” connections designed for connection with those facilities including:

(i) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(ii) Except as provided in paragraph (b)(10)(iii) of this section, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

(iii) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.

(11) *Combined sewer*. A sewer that is designed as a sanitary sewer and a storm sewer.

(12) *Complete waste treatment system*. A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(13) *Construction.* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(14) *Conventional technology.* Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

(15) *Enforceable requirements of the Act.* Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(16) *Excessive infiltration/inflow.* The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow. (See §§ 35.2005(b) (28) and (29) and 35.2120.)

(17) *Field testing.* Practical and generally small-scale testing of innovative or alternative technologies directed to verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties

which prevent the funding of a promising improvement in innovative or alternative treatment technology.

(18) *Individual systems.* Privately owned alternative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences, or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(19) *Industrial user.* Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing

Division B. Mining

Division D. Manufacturing

Division E. Transportation, Communications, Electric, Gas, and Sanitary Services

Division I. Services

(20) *Infiltration.* Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(21) *Inflow.* Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(22) *Initiation of operation.* The date specified by the grantee on which use of the project begins for the purpose for which it was planned, designed, and built.

(23) *Innovative technology.* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

(24) *Interceptor sewer.* A sewer which is designed for one or more of the following purposes:

(i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(ii) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *Interstate agency.* An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(26) *Marine bays and estuaries.* Semi-enclosed coastal waters which have a free connection to the territorial sea.

(27) *Municipality.* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization,

having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(28) *Nonexcessive infiltration.* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. (See §§ 35.2005(b)(16) and 35.2120.)

(29) *Nonexcessive inflow.* The maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus

infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows. (See §§ 35.2005(b)(16) and 35.2120).

(30) *Operation and Maintenance*. Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance*: Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment (See § 35.2005(b)(36)) as needed.)

(ii) *Operation*: Control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(31) *Principal residence*. For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(32) *Project*. The activities or tasks the Regional Administrator identifies in the grant agreement for which the grantee may expend, obligate or commit funds.

(33) *Project performance standards*. The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

(34) *Priority water quality areas*. For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from such discharges will substantially restore surface or groundwater uses.

(35) *Project schedule*. A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of

building, initiation of operation and certification of the project.

(36) *Replacement*. Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(37) *Sanitary sewer*. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(38) *Services*. A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

(39) *Small commercial establishments*. For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(40) *Small Community*. For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less or highly dispersed sections of larger municipalities, as determined by the Regional Administrator.

(41) *State*. A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas. For the purposes of applying for a grant under section 201(g)(1) of the act, a State (including its agencies) is subject to the limitations on revenue producing entities and special districts contained in § 35.2005(b)(27)(ii).

(42) *State agency*. The State agency designated by the Governor having responsibility for administration of the construction grants program under section 205(g) of the Act.

(43) *Step 1*. Facilities planning.

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(44) *Step 2.* Preparation of design drawings and specifications.

(45) *Step 3.* Building of a treatment works and related services and supplies.

(46) *Step 2+3.* Design and building of a treatment works and building related services and supplies.

(47) *Step 7.* Design/building of treatment works wherein a grantee awards a single contract for designing and building certain treatment works.

(48) *Storm sewer.* A sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

(49) *Treatment works.* Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(50) *Treatment works phase or segment.* A treatment works phase or segment may be any substantial portion of a facility and its interceptors described in a facilities plan under § 35.2030, which can be identified as a subagreement or discrete subitem. Multiple subagreements under a project shall not be considered to be segments or phases. Completion of building of a treatment works phase or segment may, but need

not in and of itself, result in an operable treatment works.

(51) *Useful life.* The period during which a treatment works operates. (Not “design life” which is the period during which a treatment works is planned and designed to be operated.)

(52) *User charge.* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

(53) *Value engineering.* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45894, Nov. 4, 1985; 55 FR 27095, June 29, 1990]

§ 35.2010 Allotment; reallocation.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year (FY). The allotment for each State and the availability period shall be announced each fiscal year in the FEDERAL REGISTER. This section applies only to funds allotted under section 205 of the Act.

(b) Unless otherwise provided by Congress, all sums allotted to a State under section 205 of the Act shall remain available for obligation until the end of the one year after the close of the fiscal year for which the sums were appropriated. Except as provided in § 35.2020(a), sums not obligated at the end of that period shall be subject to reallocation on the basis of the same ratio as applicable to the then-current fiscal year, adjusted for the States which failed to obligate any of the fiscal year funds being reallocated, but none of the funds reallocated shall be made available to any State which failed to obligate any of the fiscal year funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart

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during any fiscal year and the reallocated funds shall remain available for obligation until the last day of the fiscal year following the fiscal year in which the reallocated funds are issued by the Comptroller to the Regional Administrator.

(c) Except for funds appropriated for FY 72 and fiscal years prior to 1972, sums which are deobligated and reissued by the Comptroller to the Regional Administrator before their reallocation date shall be available for obligation in the same State and treated in the same manner as the allotment from which such funds were derived.

(d) Except for funds appropriated for FY 72 and fiscal years prior to 1972, deobligated sums which are reissued by the Comptroller to the Regional Administrator after their reallocation date shall be available for obligation in the same State until the last day of the fiscal year following the fiscal year in which the reissuance occurs.

(e) Deobligated FY 72 and prior to 1972 fiscal year funds, except 1964, 1965 and 1966 funds, will be credited to the allowances of the same Region from which such funds are recovered, and the Regional Administrator may determine how these recoveries are credited to the States within the Region.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985]

§ 35.2012 Capitalization grants.

Amounts allotted to a State under title II may be deposited in that State's water pollution control revolving fund as a capitalization grant in accordance with 40 CFR 35.5020 (f) and (g).

[55 FR 27095, June 29, 1990]

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a

State project list, except training facilities funded under section 109(b) of the Act and marine CSO projects funded under section 201(n)(2) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The priority system includes at least the following elements:

(1) *Criteria.* (i) The priority system shall include at least the following criteria for ranking projects:

(A) The impairment of classified water uses resulting from existing municipal pollutant discharges; and

(B) The extent of surface or ground water use restoration or public health improvement resulting from the reduction in pollution.

(ii) The State may also include other criteria in its priority system for ranking projects, such as the use of innovative or alternative technology, the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded; and the category of need and the existing population affected.

(iii) In ranking phased and segmented projects States must comply with § 35.2108.

(2) *Categories of need.* All projects must fit into at least one of the categories of need described in this paragraph to be eligible for funding, except as provided in paragraphs (b)(2) (iii) and (iv) of this section. States will have sole authority to determine the priority for each category of need.

(i) Before October 1, 1984, these categories of need shall include at least the following:

(A) Secondary treatment (category I);

(B) Treatment more stringent than secondary (category II);

(C) Infiltration/inflow correction (category IIIA);

(D) Major sewer system rehabilitation (category IIIB);

(E) New collector sewers and appurtenances (category IVA);

(F) New interceptors and appurtenances (category IVB);

(G) Correction of combined sewer overflows (category V).

(ii) After September 30, 1984, except as provided in paragraphs (b)(2) (iii) and (iv) of this section, these categories of need shall include only the following:

(A) Secondary treatment or any cost-effective alternative;

(B) Treatment more stringent than secondary or any cost-effective alternative;

(C) New interceptors and appurtenances; and

(D) Infiltration/inflow correction.

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of need other than those listed in paragraph (b)(2)(ii) of this section and for any purpose for which grants may be made under sections 319 (h) and (i) of the Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution).

(iv) After September 30, 1984, the Governor may include in the priority system a category for projects needed to correct combined sewer overflows which result in impaired uses in priority water quality areas. Only projects which comply with the requirements of § 35.2024(a) may be included in this category.

(c) *Project priority list.* The State's annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from funds available for obligation; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments.

(1) The State shall develop the project priority list consistent with the criteria established in the approved priority system. In ranking projects, the State must also consider total funds available, needs and priorities set forth in areawide water quality management plans, and any other factors contained in the State priority system.

(2) The list shall include an estimate of the eligible cost of each project.

(d) *Public participation.* (1) In addition to any requirements in 40 CFR part 25, the State shall hold public hearings as follows:

(i) Before submitting its priority system to the Regional Administrator for approval and before adopting any significant change to an approved priority system; and

(ii) Before submitting its annual project priority list to the Regional Administrator for acceptance and before revising its priority list unless the State agency and the Regional Administrator determine that the revision is not significant.

(iii) If the approved State priority system contains procedures for bypassing projects on the fundable portion of the priority list, such bypasses will not be significant revisions for purposes of this section.

(2) Public hearings may be conducted as directed in the State's continuing planning process document or may be held in conjunction with any regular public meeting of the State agency.

(e) *Regional Administrator review.* The State must submit its priority system, project priority list and revisions of the priority system or priority list to the Regional Administrator for review. The State must also submit each year, by August 31, a new priority list for use in the next fiscal year.

(1) After submission and approval of the initial priority system and submission and acceptance of the project priority lists under paragraph (c) of this section, the State may revise its priority system and list as necessary.

(2) The Regional Administrator shall review the State priority system and any revisions to insure that they are designed to obtain compliance with the criteria established in accordance with paragraphs (b) and (d) of this section and the enforceable requirements of the Act as defined in § 35.2005(b)(15). The Regional Administrator shall complete review of the priority system within 30 days of receipt of the system from the State and will notify the State in writing of approval or disapproval of the priority system, stating any reasons for disapproval.

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(3) The Regional Administrator will review the project priority list and any revisions to insure compliance with the State's approved priority system and the requirements of paragraph (c) of this section. The Regional Administrator will complete review of the project priority list within 30 days of receipt from the State and will notify the State in writing of acceptance or rejection, stating the reasons for the rejection. Any project which is not contained on an accepted current priority list will not receive funding.

(f) *Compliance with the enforceable requirements of the Act.* (1) Except as limited under paragraph (f)(2) of this section, the Regional Administrator, after a public hearing, shall require the removal of a specific project or portion thereof from the State project priority list if the Regional Administrator determines it will not contribute to compliance with the enforceable requirements of the Act.

(2) The Regional Administrator shall not require removal of projects in categories under paragraphs (b)(2)(i) (D) through (G) of this section which do not meet the enforceable requirements of the Act unless the total Federal share of such projects would exceed 25 percent of the State's annual allotment.

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27095, June 29, 1990]

§ 35.2020 Reserves.

In developing its priority list the State shall establish the reserves required or authorized under this section. The amount of each mandatory reserve shall be based on the allotment to each State from the annual appropriation under § 35.2010. The State may also establish other reserves which it determines appropriate.

(a) *Reserve for State management assistance grants.* Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or \$400,000, whichever is greater, for State management assistance grants under subpart A of this part. Grants may be made from these funds to cover the costs of administering activities delegated or

scheduled to be delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by the population estimates of the Bureau of Census) shall reserve not less than 4 percent nor more than 7½ percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 7½ percent of the State's allotment for the same purpose.

(c) *Reserve for innovative and alternative technologies.* Each State shall reserve not less than 4 percent nor more than 7½ percent from its annual allotment to increase the Federal share of grant awards under § 35.2032 for projects which use innovative or alternative wastewater treatment processes and techniques. Of this amount not less than one-half of one percent of the State's allotment shall be set aside to increase the Federal share for projects using innovative processes and techniques.

(d) *Reserve for water quality management.* Each State shall reserve not less than \$100,000 nor more than 1 percent from its annual allotments, to carry out water quality management planning under § 35.2023, except that in the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, a reasonable amount shall be reserved for this purpose.

(e) *Reserve for Advances of Allowance.* Each State shall reserve a reasonable portion of its annual allotment not to exceed 10 percent for advances of allowance under § 35.2025. The Regional Administrator may waive this reserve requirement where a State can demonstrate that such a reserve is not necessary because no new facilities planning or design work requiring an advance and resulting in Step 3 grant

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awards is expected to begin during the period of availability of the annual allotment.

(f) *Nonpoint source reserve.* Each State shall reserve 1 percent of its annual allotment or \$100,000, whichever is greater, for development and implementation of a nonpoint source management program under section 319 of the Act. Sums reserved by the State under this paragraph that are in excess of \$100,000 and that are not used for these purposes, may be used by the State for any other purpose under title II of the Act.

(g) *Marine estuary reserve.* The Administrator shall reserve, before allotment of funds to the States, 1 percent of the funds appropriated under section 207 in fiscal years 1987 and 1988, and 1½ percent of the funds appropriated under section 207 in fiscal years 1989 and 1990, to carry out section 205(l) of the Act.

(h) *Indian program reserve.* The Administrator shall reserve, before allotment of funds to the States, one-half of 1 percent of the funds appropriated under section 207 in fiscal years 1987, 1988, 1989 and 1990, for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985; 55 FR 27095, June 29, 1990]

§ 35.2021 Reallotment of reserves.

(a) Mandatory portions of reserves under § 35.2020(b) through (g) shall be reallotted if not obligated during the allotment period (§ 35.2010(b) and (d)). Such reallotted sums are not subject to reserves. The State management assistance reserve under § 35.2020(a) is not subject to reallotment.

(b) States may request the Regional Administrator to release funds in optional reserves or optional portions of required reserves under § 35.2020(b) through (e) for funding projects at any time before the reallotment date. If these optional reserves are not obligated or released and obligated for other purposes before the reallotment date, they shall be subject to reallotment under § 35.2010(b).

(c) Sums deobligated from the mandatory portion of reserves under paragraphs (b) through (e) of § 35.2020 which

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are reissued by the Comptroller to the Regional Administrator before the initial reallotment date for those funds shall be returned to the same reserve. (See § 35.2010(c)).

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985; 55 FR 27095, June 29, 1990]

§ 35.2023 Water quality management planning.

(a) From funds reserved under § 35.2020(d) the Regional Administrator shall make grants to the States to carry out water quality management planning including but not limited to:

(1) Identifying the most cost-effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(2) Developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (a)(1) of this section;

(3) Determining the nature, extent and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(4) Determining which publicly owned treatment works should be constructed, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of the Act.

(b) In carrying out planning with grants made under paragraph (a) of this section, a State shall develop jointly with local, regional and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this section.

§ 35.2024 Combined sewer overflows.

(a) *Grant assistance from State allotment.* As provided in § 35.2015(b)(2)(iv), after September 30, 1984, upon request from a State, the Administrator may award a grant under section 201(n)(1) of the Act from the State allotment for

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correction of combined sewer overflows provided that the project is on the project priority list, it addresses impaired uses in priority water quality areas which are due to the impacts of the combined sewer overflows and otherwise meets the requirements of this subpart. The State must demonstrate to the Administrator that the water quality goals of the Act will not be achieved without correcting the combined sewer overflows. The demonstration shall as a minimum prove that significant usage of the water for fishing and swimming will not be possible without the proposed project, and that the project will result in substantial restoration of an existing impaired use.

(b) *Separate fund for combined sewer overflows in marine waters.* (1) After September 30, 1982, the Administrator may award grants under section 201(n)(2) of the Act for addressing impaired uses or public health risks in priority water quality areas in marine bays and estuaries due to the impacts of combined sewer overflows. The Administrator may award such grants provided that the water quality benefits of the proposed project have been demonstrated by the State. The demonstration shall as a minimum prove that significant usage of the water for shellfishing and swimming will not be possible without the proposed project for correction of combined sewer overflows, and the proposed project will result in substantial restoration of an existing impaired use.

(2) The Administrator shall establish priorities for projects with demonstrated water quality benefits based upon the following criteria:

(i) Extent of water use benefits that would result, including swimming and shellfishing;

(ii) Relationship of water quality improvements to project costs; and

(iii) National and regional significance.

(3) If the project is a phase or segment of the proposed treatment works described in the facilities plan, the criteria in paragraph (b)(2) of this section must be applied to the treatment works described in the facilities plan and each segment proposed for funding.

(4) All requirements of this subpart apply to grants awarded under section 201(n)(2) of the Act except §§ 35.2010,

35.2015, 35.2020, 35.2021, 35.2025(b), 35.2042, 35.2103, 35.2109, and 35.2202.

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project and Step 7 agreements will include an allowance for facility planning in accordance with appendix B of this subpart.

(b) *Advance of allowance to potential grant applicants.* (1) After application by the State (see § 35.2040(d)), the Regional Administrator will award a grant to the State in the amount of the reserve under § 35.2020(e) to advance allowances to potential grant applicants for facilities planning and project design.

(2) The State may request that the right to receive payments under the grant be assigned to specified potential grant applicants.

(3) The State may provide advances of allowance only to small communities, as defined by the State, which would otherwise be unable to complete an application for a grant under § 35.2040 in the judgment of the State.

(4) The advance shall not exceed the Federal share of the estimate of the allowance for such costs which a grantee would receive under paragraph (a) of this section.

(5) In the event a Step 2+3, Step 3 or Step 7 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When the State recovers such advances they shall be added to its most recent grant for advances of allowance.

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27095, June 29, 1990]

§ 35.2030 Facilities planning.

(a) *General.* (1) Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the

area, it will demonstrate that, except for innovative and alternative technology under § 35.2032, the selected alternative is cost effective (*i.e.*, is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations). For sewered communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, or overland-flow land treatment; and for unsewered portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(2) Grant assistance may be awarded before certification of the completed facilities plan if:

(i) The Regional Administrator determines that applicable statutory and regulatory requirements (including part 6) have been met; that the facilities planning related to the project has been substantially completed; and that the project for which grant assistance is awarded will not be significantly affected by the completion of the facilities plan and will be a component part of the complete waste treatment system; and

(ii) The applicant agrees to complete the facilities plan on a schedule the State accepts and such schedule is inserted as a special condition of the grant agreement.

(b) *Facilities plan contents.* A completed facilities plan must include:

(1) A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

(2) A description of the Best Practicable Wastewater Treatment Technology. (See § 35.2005(b)(7).)

(3) A cost-effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the

facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effectiveness analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with the current Needs Survey. A cost-effectiveness analysis must include:

(i) An evaluation of alternative flow reduction methods. (If the grant applicant demonstrates that the existing average daily base flow (ADBf) from the area is less than 70 gallons per capita per day (gpcd), or if the Regional Administrator determines the area has an effective existing flow reduction program, additional flow reduction evaluation is not required.)

(ii) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(iv) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(v) A consideration of systems with revenue generating applications;

(vi) An evaluation of opportunities to reduce use of, or recover energy;

(vii) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.

(4) A demonstration of the non-existence or possible existence of excessive

infiltration/inflow in the sewer system. See § 35.2120.

(5) An analysis of the potential open space and recreation opportunities associated with the project.

(6) An adequate evaluation of the environmental impacts of alternatives under part 6 of this chapter.

(7) An evaluation of the water supply implications of the project.

(8) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(i) Relevant design parameters;

(ii) Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

(iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(iv) Cost impacts on wastewater system users; and

(v) Institutional and management arrangements necessary for successful implementation.

(c) *Submission and review of facilities plan.* Each facilities plan must be submitted to the State for review. EPA recommends that potential grant applicants confer with State reviewers early in the facilities planning process. In addition, a potential grant applicant may request in writing from the State and EPA an early determination under part 6 of this chapter of the appropriateness of a categorical exclusion from NEPA requirements, the scope of the environmental information document or the early preparation of an environmental impact statement.

§ 35.2032 Innovative and alternative technologies.

(a) *Funding for innovative and alternative technologies.* Projects or portions of projects using unit processes or techniques which the Regional Administrator determines to be innovative or alternative technology shall receive increased grants under § 35.2152.

(1) Only funds from the reserve in § 35.2020(c) shall be used to increase these grants.

(2) If the project is an alternative to conventional treatment works for a

small community, funds from the reserve in § 35.2020(b) may be used for the 75 percent portion, or any lower Federal share of the grant as determined under § 35.2152.

(b) *Cost-effectiveness preference.* The Regional Administrator may award grant assistance for a treatment works or portion of a treatment works using innovative or alternative technologies if the total present worth cost of the treatment works for which the grant is to be made does not exceed the total present worth cost of the most cost-effective alternative by more than 15 percent.

(1) Privately-owned individual systems (§ 35.2034) are not eligible for this preference.

(2) If the present worth costs of the innovative or alternative unit processes are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the innovative or alternative components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is a part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is a part; or requires significant additional capital expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more

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principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in §§ 35.2100 through 35.2127 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2035 Rotating biological contractor (RBC) replacement grants.

The Regional Administrator may award a grant for 100 percent of the cost, including planning and design costs, of modification or replacement of RBCs which have failed to meet design performance specifications, provided:

(a) The applicant for a modification/replacement grant demonstrates to the Regional Administrator's satisfaction, by a preponderance of the evidence, that the RBC failure is not due to the negligence of any person, including the treatment works owner, the applicant, its engineers, contractors, equipment manufacturers or suppliers;

(b) The RBC failure has significantly increased the project's capital or operation and maintenance costs;

(c) The modification/replacement project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR parts 31, 32 and 35;

(d) The modification/replacement project is included within the fundable range of the State's annual project priority list; and

(e) The State certifies the project for funding from its regular (*i.e.*, non-reserve) allotments and from funds ap-

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propriated or otherwise available after February 4, 1987.

[55 FR 27095, June 29, 1990]

§ 35.2036 Design/build project grants.

(a) *Terms and conditions.* The Regional Administrator may award a design/build (Step 7) project grant provided that:

(1) The proposed treatment works has an estimated total cost of \$8 million or less;

(2) The proposed treatment works is an aerated lagoon, trickling filter, waste stabilization pond, land application system (wastewater or sludge), slow rate (intermittent) sand filter or subsurface disposal system;

(3) The proposed treatment works will be an operable unit, will meet all requirements of title II of the Act, and will be operated to meet the requirements of any applicable permit;

(4) The grantee obtains bonds from the contractor in an amount the Regional Administrator determines adequate to protect the Federal interest in the treatment works (see 40 CFR 31.36(h));

(5) The grantee will not allow any engineer, engineering firm or contractor which provided facilities planning or pre-bid services to bid or carry out any part of the design/build work;

(6) Contracts will be firm, fixed price contracts;

(7) The grantee agrees that the grant amount, as amended to reflect the lowest responsive/responsible bid (see paragraph (e) of this section), will not be increased;

(8) The grantee will establish reasonable building start and completion dates;

(9) The grantee agrees that EPA will not pay more than 95 percent of the grant amount until after completion of building and the Regional Administrator's final project approval, based on initiation of operation and acceptance of the facility by the grantee;

(10) The grantee agrees that a recipient of a Step 7 grant is not eligible for any other grant for the project under title II of the Act; and

(11) The grantee accepts other terms and conditions deemed necessary by the Regional Administrator.

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(b) *Procurement.* (1) Grantee procurement for developing or supplementing the facilities plan to prepare the pre-bid package, as well as for designing and building the project and performing construction management and contract administration, will be in accordance with EPA procurement requirements at 40 CFR part 31.

(2) The grantee will use the sealed bid (formal advertising) method of procurement to select the design/build contractor.

(3) The grantee may use the same architect or engineer that prepared the facilities plan to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (see 40 CFR 31.36(k)).

(c) *Pre-bid package.* Each design/build project grant will provide for the preparation of a pre-bid package that is sufficiently detailed to insure that the bids received for the design/build work are complete, accurate and comparable and will result in a cost-effective, operable facility.

(d) *Grant amount.* The grant amount will be based on an estimate of the design/build project's final cost, including:

(1) An allowance for facilities planning if the grantee did not receive a Step 1 grant (the amount of the allowance is established as a percentage of the estimated design/build cost in accordance with appendix B of this subpart);

(2) An estimated cost of supplementing the facilities plan and other costs necessary to prepare the pre-bid package (see appendix A.I.1(a) of this subpart); and

(3) The estimated cost of the design/build contract.

(e) *Amended grant amount.* (1) After bids are accepted for the design/build contract, and the price of the lowest responsive, responsible bidder is determined, EPA will amend the design/build project grant based on:

(i) The amount of the lowest responsive, responsible bid;

(ii) A lump sum for construction management, contract and project administration services and contingencies;

(iii) Any adjustments to the final allowance for facilities planning if included as required by paragraph (c)(1) of this section (the amount of the final allowance is established as a percentage of the actual building cost in accordance with appendix B of this subpart);

(iv) The actual reasonable and necessary cost of supplementing the facilities plan to prepare the pre-bid package (see paragraph (c)(1) of this section); and

(v) The submission of approvable items required by § 35.2203 of this part.

(2) Changes to Step 7 projects cannot increase the amount of EPA assistance established at the time of the grant amendment.

(f) *Allotment limit for design/build grants.* The Governor may use up to 20 percent of the State's annual allotment for design/build project grants.

[55 FR 27096, June 29, 1990]

§ 35.2040 Grant application.

Applicants for Step 2+3 or Step 3 assistance shall submit applications to the State. In addition to the information required in parts 30 and 33 of this subchapter, applicants shall provide the following information:

(a) *Step 2+3: Combined design and building of a treatment works and building related services and supplies.* An application (EPA form 5700-32) for Step 2+3 grant assistance shall include:

(1) A facilities plan prepared in accordance with subpart E or I as appropriate;

(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b);

(4) Evidence of compliance with all application limitations on award (§§ 35.2100 through 35.2127); and

(5) The project schedule.

(b) *Step 3: Building of a treatment works and related services and supplies.* An application (EPA form 5700-32) for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with subpart E or I as appropriate;

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(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b);

(4) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2127);

(5) Final design drawings and specifications;

(6) The project schedule; and

(7) In the case of an application for Step 3 assistance that is solely for the acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage systems, and an explanation of the intended method of acquiring the real property (see 40 CFR part 4).

(c) *Training facility project.* An application (EPA form 5700–32) for a grant for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include:

(1) A written commitment from the State agency to carry out at such facility a program of training; and

(2) If a facility is to be built, an engineering report including facility design data and cost estimates for design and building.

(d) *Advances of allowance.* State applications for advances of allowance to small communities shall be on EPA form 5700–31, Application for Federal Assistance (short form). The application shall include:

(1) A list of communities that received an advance of allowance and the amount received by each under the previous State grant; and

(2) The basis for the amount requested.

(e) *Field Testing of Innovative and Alternative Technology.* An application (EPA Form 5700–32) for field testing of I/A projects shall include a field testing plan containing:

(1) Identification; including size, of all principal components to be tested;

(2) Location of testing facilities in relationship to full scale design;

(3) Identification of critical design parameters and performance variables that are to be verified as the basis for I/A determinations;

(4) Schedule for construction of field testing facilities and duration of proposed testing;

(5) Capital and O&M cost estimate of field testing facilities with documentation of cost effectiveness of field testing approach; and

(6) Design drawing, process flow diagram, equipment specification and related engineering data and information sufficient to describe the overall design and proposed performance of the field testing facility.

(f) *Marine CSO Fund Project.* An application (EPA Form 5700–32) for marine CSO grant assistance under § 35.2024(b) shall include:

(1) All information required under paragraphs (b) (1), (2), (4), (6), and (7), of this section;

(2) Final design drawings and specifications or a commitment to provide them by a date set by the Regional Administrator; and

(3) The water quality benefits demonstration required under § 35.2024(b)(1).

(g) *Design/build project grant (Step 7).* An application (EPA Form 5700–20) for a design/build project grant shall include:

(1) All the information required in paragraphs (b) (1), (2) and (4) of this section; and

(2) The estimated building start and completion dates and Federal payment schedule (the start and completion dates may be revised when the design/build bids are accepted and included in the amended grant).

(Approved by the Office of Management and Budget under control number 2040–0027)

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985; 55 FR 27096, June 29, 1990]

§ 35.2042 Review of grant applications.

(a) All States shall review grant applications to ensure that they are complete. When the State determines the proposed project is entitled to priority it shall forward the State priority certification and, except where application review is delegated, the complete application to the regional Administrator for review.

(b)(1) All States delegated authority to manage the construction grants program under section 205(g) of the Act and subpart F of this part shall furnish

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a written certification to the Regional Administrator, on a project-by-project basis, stating that the applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement which will be made available to the Regional Administrator upon request. The Regional Administrator shall accept the certification unless he determines the State has failed to establish adequate grounds for the certification or that an applicable requirement has not been met.

(2)(i) When EPA receives a certification covering all delegable preaward requirements, the Regional Administrator shall approve or disapprove the grant within 45 calendar days of receipt of the certification. The Regional Administrator shall state in writing the reasons for any disapproval, and he shall have an additional 45 days to review any subsequent revised submissions. If the Regional Administrator fails to approve or disapprove the grant within 45 days of receipt of the application, the grant shall be deemed approved and the Regional Administrator shall issue the grant agreement.

(ii) Grant increase requests are subject to the 45 day provision of this section if the State has been delegated authority over the subject matter of the request.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the Act and § 35.2025 will be reviewed in accordance with part 30 of this subchapter.

(Approved by the Office of Management and Budget under control number 2040-0027)

§ 35.2050 Effect of approval or certification of documents.

Review or approval of facilities plans, design drawings and specifications or other documents by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good

management practices. EPA is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other sub-agreement documents.

§ 35.2100 Limitations on award.

(a) *Facilities plan approval.* Before awarding grant assistance for any project the Regional Administrator shall approve the facilities plan and final design drawings and specifications and determine that the applicant and the applicant's project have met all the applicable requirements of §§ 35.2040 and 35.2100 through § 35.2127 except as provided in § 35.2202 for Step 2+3 projects and § 35.2203 for Step 7 projects.

(b) *Agreement on eligible costs.* (1) Concurrent with the approval of a Step 3, Step 2+3 or Step 7 grant, the Regional Administrator and the grant applicant will enter into a written agreement which will specify the items in the proposed project that are eligible for Federal payments and which shall be incorporated as a special grant condition in the grant award.

(2) Notwithstanding such agreement, the Regional Administrator may:

(i) Modify eligibility determinations that are found to violate applicable Federal statutes and regulations;

(ii) Conduct an audit of the project;

(iii) Withhold or recover Federal funds for costs that are found to be unreasonable, unsupported by adequate documentation or otherwise unallowable under applicable Federal cost principles;

(iv) Withhold or recover Federal funds for costs that are incurred on a project that fails to meet the design specifications or effluent limitations contained in the grant agreement and NPDES permit issued under section 402 of the Act.

[55 FR 27096, June 29, 1990]

§ 35.2101 Advanced treatment.

Projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced treatment review policy. This review must be completed before submission of any

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application. EPA recommends that potential grant applicants obtain this review before initiation of design.

§ 35.2102 Water quality management planning.

Before grant assistance can be awarded for any treatment works project, the Regional Administrator shall first determine that the project is:

(a) Included in any water quality management plan being implemented for the area under section 208 of the Act or will be included in any water quality management plan that is being developed for the area and reasonable progress is being made toward the implementation of that plan; and

(b) In conformity with any plan or report implemented or being developed by the State under sections 303(e) and 305(b) of the Act.

[55 FR 27097, June 29, 1990]

§ 35.2103 Priority determination.

The project shall be entitled to priority in accordance with § 35.2015, and the award of grant assistance for the project shall not jeopardize the funding of any project of higher priority under the approved priority system.

§ 35.2104 Funding and other considerations.

(a) The applicant shall;

(1) Agree to pay the non-Federal project costs;

(2) Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building and operation and maintenance of the treatment works throughout the applicant's jurisdiction including the ability to comply with part 30 of this subchapter. This demonstration must include: An explanation of the roles and responsibilities of the local governments involved; how construction and operation and maintenance of the facilities will be financed; a current estimate of the cost of the facilities; and a calculation of the annual costs per household. It must also include a written certification signed by the applicant that the applicant has analyzed the costs and financial impacts of the proposed facilities, and that it has the capability to finance and manage their building and operation and maintenance

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nance in accordance with this regulation;

(3) Certify that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

(4) Indicate the level of participation for minority and women's business enterprises during facilities planning and design of the project.

(b) Federal assistance made available by the Farmers Home Administration may be used to provide the non-Federal share of the project's cost.

(Approved by the Office of Management and Budget under control number 2040–0027)

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27097, June 29, 1990]

§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 40 CFR 32.400. If the applicant indicates it has used the services of a debarred individual or firm, EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under part 30 of this subchapter or be the subject of possible debarment or suspension under part 32 of this subchapter.

§ 35.2106 Plan of operation.

The applicant shall submit a draft plan of operation that addresses development of: An operation and maintenance manual; an emergency operating program; personnel training; an adequate budget consistent with the user charge system approved under § 35.2140; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

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§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered. The Regional Administrator may waive this requirement provided the applicant can demonstrate:

- (a) That such an agreement is already in place; or
- (b) Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements, and
- (c) That the financial strength of the supplier agency is adequate to continue the project, even if one of the proposed customer agencies fails to participate.

(Approved by the Office of Management and Budget under control number 2040-0027)

§ 35.2108 Phased or segmented treatment works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

- (a) The grant agreement requires the recipient to make the treatment works of which the phase or segment is a part operational and comply with the enforceable requirements of the Act according to a schedule specified in the grant agreement regardless of whether grant funding is available for the remaining phases and segments; and
- (b) Except in the case of a grant solely for the acquisition of eligible real property, one or more of the following conditions exist:
 - (1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major

portion of the State's annual allotment;

(2) The period to complete the building of the treatment works will cover three years or more;

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order; or

(4) The treatment works is being phased or segmented to build only the less-than-secondary facility pending a final decision on the applicant's request for a secondary treatment requirement waiver under section 301(h) of the Act.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985]

§ 35.2109 Step 2+3.

The Regional Administrator may award a Step 2+3 grant which will provide the Federal share of an allowance under appendix B and the estimated allowable cost of the project only if:

- (a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;
- (b) The total Step 3 building cost is estimated to be \$8 million or less; and
- (c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant can be awarded for projects that discharge into stream segments which have not, at least once since December 29, 1981, had their water quality standards reviewed and revised or new standards adopted, as appropriate, under section 303(c) of the Act, unless:

- (a) The State has in good faith submitted such water quality standards and the Regional Administrator has failed to act on them within 120 days of receipt;
- (b) The grant assistance is for the construction of non-discharging land treatment or containment ponds; or

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(c) The grant assistance is a State program grant awarded under section 205(g) or 205(j) of the Act.

[50 FR 45895, Nov. 4, 1985]

§ 35.2112 Marine discharge waiver applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by part 6 of this chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under part 6 of this chapter.

§ 35.2114 Value engineering.

(a) If the project has not received Step 2 grant assistance the applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

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§ 35.2116 Collection system.

Except as provided in § 35.2032(c), if the project involves collection system work, such work:

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(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not built with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system; or

(b) Shall be for a new cost-effective collection system in a community in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in § 35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2+3 and Step 3 work performed before award of grant assistance for that project, except:

(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary building work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land or an option for the purchase of eligible land or advance building on minor portions of treatment works) after completion of the environmental review as required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk.

(b) Any procurement is subject to the requirements of 40 CFR part 33, and in the case of acquisition of eligible real property, 40 CFR part 4.

(Approved by the Office of Management and Budget under control number 2040-0027)

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27097, June 29, 1990]

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§ 35.2120 Infiltration/Inflow.

(a) *General.* The applicant shall demonstrate to the Regional Administrator's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

(b) *Inflow.* If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, or the rainfall-induced total flow rate exceeds 275 gpcd during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effectiveness analysis.

(c) *Infiltration.* (1) If the flow rate at the existing treatment facility is 120 gallons per capita per day or less during periods of high groundwater, the applicant shall build the project including sufficient capacity to transport and treat any existing infiltration. However, if the applicant believes any specific portion of its sewer system is subject to excessive infiltration, the applicant may confirm its belief in a cost-effectiveness analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

(2) If the flow rate at the existing treatment facility is more than 120 gallons per capita per day during periods of high groundwater, the applicant shall either:

(i) Perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration; or

(ii) If the flow rate is not significantly more than 120 gallons per capita per day, request the Regional Administrator to determine that he may proceed without further study, in which case the allowable project cost will be limited to the cost of a project with a

capacity of 120 gallons per capita per day under appendix A.G.2.a.

(Approved by the Office of Management and Budget under control number 2040-0027)

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985]

§ 35.2122 Approval of user charge system and proposed sewer use ordinance.

If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the applicant must obtain the Regional Administrator's approval of its user charge system (§ 35.2140) and proposed (or existing) sewer use ordinance § 35.2130). If the applicant has a sewer use ordinance or user charge system in effect, the applicant shall demonstrate to the Regional Administrator's satisfaction that they meet the requirements of this part and are being enforced.

(Approved by the Office of Management and Budget under control number 2040-0027)

§ 35.2123 Reserve capacity.

EPA will limit grant assistance for reserve capacity as follows:

(a) If EPA awarded a grant for a Step 3 interceptor segment before December 29, 1981, EPA may award grants for remaining interceptor segments included in the facilities plan with reserve capacity as planned, up to 40 years.

(b) Except as provided in paragraph (a) of this section, if EPA awards a grant for a Step 3 or Step 3 segment of a primary, secondary, or advanced treatment facility or its interceptors included in the facilities plan before October 1, 1984, the grant for that Step 3 or Step 3 segment, and any remaining segments, may include 20 years reserve capacity.

(c) Except as provided in paragraph (b) of this section, after September 30, 1984, no grant shall be made to provide reserve capacity for a project for secondary treatment or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs (including existing needs of residential, commercial, industrial, and other users) as determined on the date of the approval of the Step 3 grant. Grant assistance

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awarded after September 30, 1990 shall be limited to the needs existing on September 30, 1990.

(d) For any application with capacity in excess of that provided by this section:

(1) All incremental costs shall be paid by the applicant. Incremental costs include all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) and (b) of this section.

(2) It must be determined that the actual treatment works to be built meets the requirements of the National Environmental Policy Act and all applicable laws and regulations.

(3) The Regional Administrator shall approve the plans, specifications and estimates for the actual treatment works.

(4) The grantee shall assure the Regional Administrator satisfactorily that it has assessed the costs and financial impacts of the actual treatment works and has the capability to finance and manage their construction and operation.

(5) The grantee must implement a user charge system which applies to the entire service area of the grantee.

(6) The grantee shall execute appropriate grant conditions or releases protecting the Federal Government from any claim for any of the costs of construction due to the additional capacity.

§ 35.2125 Treatment of wastewater from industrial users.

(a) Grant assistance shall not be provided for a project unless the project is included in a complete waste treatment system and the principal purpose of both the project and the system is for the treatment of domestic wastewater of the entire community, area, region or district concerned.

(b) Allowable project costs do not include:

(1) Costs of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; or

(2) Costs for control or removal of pollutants in wastewater introduced

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into the treatment works by industrial users, unless the applicant is required to remove such pollutants introduced from nonindustrial users.

§ 35.2127 Federal facilities.

Grant assistance shall not be provided for costs to transport or treat wastewater produced by a facility that is owned and operated by the Federal Government which contributes more than 250,000 gallons per day or 5 percent of the design flow of the complete waste treatment system, whichever is less.

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§ 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

(Approved by the Office of Management and Budget under control number 2040-0027)

§ 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for operation and maintenance (including replacement). It shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section, ad valorem taxes under paragraph (b) of this section, or a combination of the two.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small non-residential user class (including at the grantee's option non-residential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for

revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (*i.e.*, infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the users;

(iii) Number of hookups or discharges of the users;

(iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) After completion of building a project, revenue from the project (*e.g.*, sale of a treatment-related by-product; lease of the land; or sale of crops grown on the land purchased under the grant agreement) shall be used to offset the costs of operation and maintenance. The grantee shall proportionately reduce all user charges.

(g) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(h) *Inconsistent agreements.* The user charge system shall take precedence

over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and this section.

(i) *Low income residential user rates.* (1) Grantees may establish lower user charge rates for low income residential users after providing for public notice and hearing. A low income residential user is any residence with a household income below the Federal poverty level as defined in 45 CFR 1060.2 or any residence designated as low income under State law or regulation.

(2) Any lower user charge rate for low income residential users must be defined as a uniform percentage of the user charge rate charged other residential users.

(3) The costs of any user charge reductions afforded a low income residential class must be proportionately absorbed by all other user classes. The total revenue for operation and maintenance (including equipment replacement) of the facilities must not be reduced as a result of establishing a low income residential user class.

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[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27097, June 29, 1990]

§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 or Step 7 allowable costs and the allowance established in the grant agreement under appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) Subject to paragraphs (c) and (d) of this section, 75 percent for grant assistance awarded after September 30, 1984 and before October 1, 1990, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in a facilities

plan approved by the Regional Administrator before October 1, 1984;

(ii) The Step 3 grant for the initial phase or segment of the treatment works described in (a)(3)(i) of this section is awarded prior to October 1, 1984; and

(iii) The phase or segment that receives 75 percent funding is necessary to (A) make a phase or segment previously funded by EPA operational and comply with the enforceable requirements of the Act, or (B) complete the treatment works referenced in (a)(3)(i) of this section provided that all phases or segments previously funded by EPA are operational and comply with the enforceable requirements of the Act.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the Federal share for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater than 85 percent. This increased Federal share depends on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) A project for which an application for grant assistance has been made before October 1, 1984, but which was under judicial injunction at that time prohibiting its construction, shall be eligible for a grant at 75 percent of the cost of its construction.

(d) *Uniform lower Federal share.* (1) Except as provided in § 35.2032 (c) and (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The revised Federal share must apply to all needs categories (see § 35.2015(b)(2)).

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(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase that is within the scope of the project.

(3) The uniform lower Federal share established by the Governor does not apply to projects funded under § 35.2024(b).

(e) *Training facilities.* The Federal share of treatment works required to train and upgrade waste treatment works operations and maintenance personnel may be up to 100 percent of the allowable cost of the project.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities shall not exceed \$500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to \$500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

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[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45896, Nov. 4, 1985; 55 FR 27097, June 29, 1990]

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

§ 35.2202 Step 2+3 projects.

(a) Prior to initiating action to acquire eligible real property, a Step 2+3 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before initiating procurement action for the building of the project, a Step 2+3 grantee shall submit for the Regional Administrator's review and written approval the information required under §§ 35.2040(b) (5) and (6), 35.2106, 35.2107, 35.2130 and 35.2140.

§ 35.2203 Step 7 projects.

(a) Prior to initiating action to acquire real property, a Step 7 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before approving a Step 7 grant amendment under § 25.2036, the Regional Administrator shall determine that the applicant and its project have met the requirements of §§ 35.2040 (b)(6) and (g), 35.2106, 35.2107, and 35.2122.

[55 FR 27097, June 29, 1990]

§ 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) The grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:

(1) Alter the project performance standards;

(2) Alter the type of wastewater treatment provided by the project;

(3) Significantly delay or accelerate the project schedule;

(4) Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project; or

(5) Otherwise require a formal grant amendment under part 30 of this subchapter.

(c) Notwithstanding paragraph (a) of this section, changes to Step 7 projects cannot increase the amount of EPA assistance established at the time of the grant amendment.

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27097, June 29, 1990]

§ 35.2205 Maximum allowable project cost.

(a) *Grants awarded on or after the effective date of this regulation.* Except as provided in paragraph (c) of this section, for Step 2+3 or Step 3 grants

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awarded on or after the effective date of this regulation, the maximum allowable project cost will be the sum of:

(1) The allowable cost of the following:

(i) The initial award amount of all project subagreements between the grantee and its contractors;

(ii) The initial amounts approved for force account work to be performed on the project;

(iii) The purchase price of eligible real property; and

(iv) The initial amount approved for project costs not included under paragraphs (a)(1)(i) through (a)(1)(iii) of this section, excluding any amounts approved for an allowance under § 35.2025 and for contingencies; and

(2) Five percent of the sum of the amounts included under paragraphs (a)(1)(i) through (a)(1)(iv) of this section.

(b) *Grants awarded before the effective date of the regulation.* Except as provided in paragraph (c) of this section, for Step 2+3 or Step 3 grants awarded before the effective date of this regulation, the maximum allowable increase in the cost for work covered by each subagreement finally advertised or, where there will be no advertisement, each subagreement awarded on or after the effective date of this regulation will be five percent of the initial award amount of the subagreement.

(c) *Differing site conditions.* In determining whether the maximum allowable project cost or increase in subagreement cost will be exceeded, costs of equitable adjustments for differing site conditions will be exempt, provided the requirements of 40 CFR part 35, subpart I, appendix A, paragraph A.1.g. and all other applicable laws and regulations have been met.

[50 FR 46649, Nov. 12, 1985]

§ 35.2206 Operation and maintenance.

(a) The grantee must assure economical and effective operation and maintenance (including replacement) of the treatment works.

(b) Except as provided in paragraphs (c) (1) and (2) of this section, the Regional Administrator shall not pay more than 50 percent of the Federal share of any project unless the grantee has furnished and the Regional Admin-

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istrator has approved the final plan of operation required by § 35.2106, and shall not pay more than 90 percent of the Federal share of any project unless the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(c)(1) In projects where segmenting of a proposed treatment works has occurred, the Regional Administrator shall not pay more than 90 percent of the Federal share of the total allowable costs of the proposed treatment works until the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(2) In projects where a component is placed in operation before completion of the entire project, the Regional Administrator shall not make any additional payment on that project until a final operation and maintenance manual for the operating component is furnished and approved.

(Approved by the Office of Management and Budget under control number 2040-0027)

§ 35.2208 Adoption of sewer use ordinance and user charge system.

The grantee shall adopt its sewer use ordinance and implement its user charge system developed under §§ 35.2130 and 35.2140 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

§ 35.2210 Land acquisition.

The grantee shall not acquire real property determined allowable for grant assistance until the Regional Administrator has determined that applicable provisions of 40 CFR part 4 have been met.

§ 35.2211 Field testing for Innovative and Alternative Technology Report.

The grantee shall submit a report containing the procedure, cost, results and conclusions of any field testing. The report shall be submitted to the Regional Administrator in accordance with a schedule to be specified in the grant agreement.

(Approved by the Office of Management and Budget under control number 2040-0027)

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§ 35.2212 Project initiation.

(a) The grantee shall expeditiously initiate and complete the project, in accordance with the project schedule contained in the grant application and agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions under part 30 of this chapter.

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or, after receiving written approval of the information required under § 35.2202 under a Step 2+3 grant or, for a Step 7 project, after completing the facilities plan and the preparation of a pre-bid package that is sufficiently detailed to insure that the bids received form the design/build work will be complete, accurate, comparable and will result in a cost-effective operable facility. Public notice of proposed procurement action should be made promptly after Step 3 award or after final approvals for a Step 2+3 grant under § 35.2202, or after completing the pre-bid package for the Step 7 award. The grantee shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project within twelve months of the Step 3 award or final Step 2+3 approvals.

(c) Failure to promptly award all subagreement(s) for building the project will result in a limitation on allowable costs. (See appendixes A, A.2.e.).

(d) The grantee shall notify the Regional Administrator immediately upon award of the subagreement(s) for building all significant elements of the project (see 40 CFR 33.211).

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[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27097, June 29, 1990]

§ 35.2214 Grantee responsibilities.

(a) The grantee shall complete the project in accordance with the grant agreement including: The facilities plan that establishes the need for the project; the design drawings and specifications; the plan of operation under § 35.2106 that identifies the basis to determine annual operating costs; the fi-

nancial management system under § 35.2140(d) that adequately accounts for revenues and expenditures; the user charge system under § 35.2140 that will generate sufficient revenue to operate and maintain the treatment works; the project schedule; and all other applicable regulations. The grantee shall maintain and operate the project to meet project performance standards including the enforceable requirements of the Act for the design life.

(b) The grantee shall provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph (a) of this section.

§ 35.2216 Notice of building completion and final inspection.

The grantee shall notify the Regional Administrator when the building of the project is complete. Final inspection shall be made by the Regional Administrator after receipt of the notice of building completion.

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§ 35.2218 Project performance.

(a) The grantee shall notify the Regional Administrator in writing of the actual date of initiation of operation.

(b) Subject to the provisions of 40 CFR part 33, the grantee shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

(1) Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

(3) Advise the grantee whether the project is meeting the project performance standards.

(c) On the date one year after the initiation of operation of the project, the grantee shall certify to the Regional Administrator whether the project

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meets the project performance standards. If the Regional Administrator or the grantee concludes that the project does not meet the project performance standards, the grantee shall submit the following:

(1) A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards (including the quantity of infiltration/inflow proposed to be eliminated), and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

(2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(3) The scheduled date for certifying to the Regional Administrator that the project is meeting the project performance standards.

(d) Except as provided in §35.2032(c) the grantee shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense. This limitation on Federal funding for corrective actions does not apply to training funds under section 104(g)(1) of the Act.

(e) Nothing in this section:

(1) Prohibits a grantee from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

(2) Affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out its obligations under §35.2214.

(Approved by the Office of Management and Budget under control number 2040-0027)

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27098, June 29, 1990]

§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, §30.705 of this subchapter, and appendix A of this subpart.

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§ 35.2260 Advance purchase of eligible land.

In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing Step 3 assistance for the building of facilities: §§35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2262 Funding of field testing.

In the case of grant assistance for field testing of innovative or alternative wastewater process and techniques, the following provisions are deferred until the award of assistance for building the approved facilities: §§35.2105, 35.2106, 35.2122, 35.2130, 35.2140, 35.2206, and 35.2208.

§ 35.2300 Grant payments.

Except as provided in §35.2206, the Regional Administrator shall pay the Federal share of the allowance under §35.2025 and the allowable project costs incurred to date and currently due and payable by the grantee, as certified in the grantee's most recent payment request.

(a) *Adjustment.* The Regional Administrator may at any time review and audit requests for payment and payments and make appropriate adjustments as provided in part 30 of this chapter.

(b) *Refunds, rebates and credits.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the grantee securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(c) *Release.* By its acceptance of final payment, the grantee releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between

the Regional Administrator and the grantee.

(d) *Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Notwithstanding the provisions of the introductory paragraph of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award for the Federal share of the eligible cost of any payment of relocation assistance under §4.502(c) of this chapter by the grantee. The requirements in part 30 of this subchapter apply to any advances of funds for assistance payments.

(e) *Payment under grants to States for advances of allowance—(1) Advance payment to State.* Notwithstanding the provisions of the introductory paragraph of this section, the Regional Administrator, under a State grant for advances of allowance (see §35.2025), may make payments on an advance or letter-of-credit payment method in accordance with the requirements under part 30 of this chapter. The State and the Regional Administrator shall agree to the payment terms.

(2) *Assignment.* If the State chooses to assign its payments to a potential grant applicant, it shall execute an agreement with the potential grant applicant authorizing direct payment from EPA and establishing appropriate terms for payment. The State shall provide a copy of the agreement to EPA.

(f) *Design/build projects.* For design/build projects, the Regional Administrator shall not pay more than 95 percent of the grant amount until completion of building and the RA's final project approval (see §35.2036(a)(6)).

(Approved by the Office of Management and Budget under control number 2040-0027)

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27098, June 29, 1990]

§35.2350 Subagreement enforcement.

(a) *Regional Administrator authority.* At the grantee's request the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which an EPA grant was made and to intervene in any civil action involving

the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.

(b) *Privity of subagreement.* The Regional Administrator's technical or legal involvement in any subagreement dispute will not make EPA a party to any subagreement entered into by the grantee.

(c) *Grantee responsibilities.* The provision of technical or legal assistance under this section in no way releases the grantee from its obligations under §35.2214, or affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out those obligations.

APPENDIX A TO SUBPART I OF PART 35— DETERMINATION OF ALLOWABLE COSTS

(a) *Purpose.* The information in this appendix represents Agency policies and procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles under part 30 of this subchapter and reasonableness.

(b) *Applicability.* This cost information applies to grant assistance awarded on or after the effective date of this regulation. Project cost determinations under this subpart are not limited to the items listed in this appendix. Additional cost determinations based on applicable law and regulations must of course be made on a project-by-project basis. Those cost items not previously included in program requirements are not mandatory for decisions under grants awarded before the effective date. They are only to be used as guidance in those cases.

A. Costs Related to Subagreements

1. Allowable costs related to sub-agreements include:

a. The costs of subagreements for building the project.

b. The costs of complying with the procurement requirements of part 33 of this subchapter, other than the costs of self-certification under §33.110.

c. The cost of legal and engineering services incurred by grantees in deciding procurement protests and defending their decisions in protest appeals under subpart G of 40 CFR part 33.

d. The costs for establishing or using minority and women's business liaison services.

e. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications.

f. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a grantee under a subagreement provided:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the grantee; and

(4) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim.

g. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(1) Change orders and the costs of meritorious contractor claims provided the costs are:

(i) Within the scope of the project;

(ii) Not caused by the grantee's mismanagement; and

(iii) Not caused by the grantee's vicarious liability for the improper actions of others.

(2) Provided the requirements of paragraph g(1) are met, the following are examples of allowable change orders and contractor claim costs:

(i) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects;

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under §33.1030 of this subchapter.

(3) Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant award official and shall be allowable only to the extent that they meet the requirements of paragraph g(1), are reasonable, and do not attempt to pass on to EPA the cost of events that were the responsibility of the grantee, the contractor, or others.

h. The costs of the services of the prime engineer required by §35.2218 during the first year following initiation of operation of the project.

i. The cost of development of a plan of operation including an operation and maintenance manual required by §35.2106.

j. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

k. The specific and unique costs of field testing an innovative or alternative process or technique, which may include equipment leasing costs, personnel costs, and utility costs necessary for constructing, conducting, and reporting the results of the field test.

2. Unallowable costs related to sub-agreements include:

a. The costs of architectural or engineering services incurred in preparing a facilities plan and the design drawings and specifications for a project. This provision does not apply to planning and design costs incurred in the modification or replacement of an innovative or alternative project funded under §35.2032(c).

b. Except as provided in 1.g. above, architectural or engineering services or other services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents.

c. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The claim cannot be settled without arbitration or litigation;

(4) The claim does not result from the grantee's mismanagement;

(5) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the grantee's responsibility for the improper action of others.

d. Bonus payments, not legally required, for completion of building before a contractual completion date.

e. All incremental costs due to the award of any subagreements for building significant elements of the project more than 12 months after the Step 3 grant award or final Step 2+3 approvals unless specified in the project schedule approved by the Regional Administrator at the time of grant award.

B. Mitigation

1. Allowable costs include:

a. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works.

b. The costs of site screening necessary to comply with NEPA related studies and facilities plans, or necessary to screen adjacent properties.

c. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

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2. Unallowable costs include:

a. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.

b. The cost of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under NEPA.

C. Privately or Publicly Owned Small and Onsite Systems

1. Allowable costs for small and onsite systems serving residences and small commercial establishments inhabited on or before December 27, 1977, include a. through e. below. Alternatively, the two-thirds rule at 40 CFR 35.2116(b) may be used to determine allowable residential flows to be served by publicly owned small and alternative wastewater systems, including a. through e. below:

a. The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences.

b. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings.

c. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices.

d. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

e. The cost of restoring individual system building sites to their original condition.

2. Unallowable costs for small and onsite systems include:

a. Modification to physical structure of homes or commercial establishments.

b. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property.

c. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

D. Real Property

1. Allowable costs for land and rights-of-way include:

a. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement under grants awarded after October 17, 1972, that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Regional

Administrator approves it in the grant agreement. These costs include:

(1) The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land acquired for a soil absorption system for a group of two or more homes;

(3) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

(4) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 *et seq.*, 4651 *et seq.*), under part 4 of this chapter for land necessary for the building of treatment works.

c. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services.

d. The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(1) The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;

(2) The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the grantee is legally obligated to pay under state or local law; and

(3) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

e. The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

(1) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

(2) The acquired treatment works was not built with previous Federal or State financial assistance;

(3) The primary purpose of the acquisition is *not* the reduction, elimination, or redistribution of public or private debt; and

(4) The acquisition does not circumvent the requirements of the Act, these regulations, or other Federal, State or local requirements.

2. Unallowable costs for land and rights-of-way include:

a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraphs 1. a. and b. of this section.

b. Any amount paid by the grantee for eligible land in excess of just compensation, based on the appraised value, the grantee's record of negotiation or any condemnation proceeding, as determined by the Regional Administrator.

c. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

E. Equipment, Materials and Supplies

1. Allowable costs of equipment, materials and supplies include:

a. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

b. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.

c. Cost of shop equipment installed at the treatment works necessary to the operation of the works.

d. The costs of necessary safety equipment, provided the equipment meets applicable Federal, State, local or industry safety requirements.

e. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded on the grant. This calculation shall be based on: (1) The portion of the total collection system paid for by the grant, (2) a demonstrable frequency of need, and (3) the need for the equipment to preclude the discharge or bypassing of untreated wastewater.

f. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

(1) Portable stand-by generators;

(2) Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

(3) Sludge or septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered

wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

g. Replacement parts identified and approved in advance by the Regional Administrator as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

(1) Not immediately available and/or whose procurement involves an extended "lead-time;"

(2) Identified as critical by the equipment supplier(s); or

(3) Critical but not included in the inventory provided by the equipment supplier(s).

2. Unallowable costs of equipment, materials and supplies include:

a. The costs of equipment or material procured in violation of the procurement requirements of 40 CFR part 33.

b. The cost of furnishings including draperies, furniture and office equipment.

c. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

d. The cost of vehicles for the transportation of the grantees' employees.

e. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

F. Industrial and Federal Users

1. Except as provided in paragraph F.2.a., allowable costs for treatment works serving industrial and Federal facilities include development of a municipal pretreatment program approvable under part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

2. Unallowable costs for treatment works serving industrial and Federal facilities include:

a. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under part 403 of this chapter.

b. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works.

c. All incremental costs for sludge management incurred as a result of the grantee providing removal credits to industrial users under 40 CFR 403.7 beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

G. Infiltration/Inflow

1. Allowable costs include:

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a. The cost of treatment works capacity adequate to transport and treat nonexcessive infiltration/inflow under §35.2120.

b. The costs of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under §35.2120.

2. Unallowable costs include:

a. When the Regional Administrator determines that the flow rate is not significantly more than 120 gallons per capita per day under §35.2120(c)(2)(ii), the incremental cost of treatment works capacity which is more than 120 gallons per capita per day.

H. Miscellaneous Costs

1. Allowable costs include:

a. The costs of salaries, benefits and expendable materials the grantee incurs for the project.

b. Unless otherwise specified in this regulation, the costs of meeting specific Federal statutory procedures.

c. Costs for necessary travel directly related to accomplishment of project objectives. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement.

d. The costs of additions to a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84-660), or its amendments, and that fails to meet its project performance standards provided:

(1) The project is identified on the State priority list as a project for additions to a treatment works that has received previous Federal funds;

(2) The grant application for the additions includes an analysis of why the treatment works cannot meet its project performance standards; and

(3) The additions could have been included in the original grant award and:

(a) Are the result of one of the following:

(i) A change in the project performance standards required by EPA or the State;

(ii) A written understanding between the Regional Administrator and grantee prior to or included in the original grant award;

(iii) A written direction by the Regional Administrator to delay building part of the treatment works; or

(iv) A major change in the treatment works' design criteria that the grantee cannot control; or

(b) Meet all the following conditions:

(i) If the original grant award was made after December 28, 1981, the treatment works has not completed its first full year of operation;

(ii) The additions are not caused by the grantee's mismanagement or the improper actions of others;

(iii) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the grant; and

(iv) The grant does not include an allowance for facilities planning or design of the additions.

(4) This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover a treatment works that fails at the end of its design life.

e. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Regional Administrator.

f. Costs allocable to the water pollution control purpose of multiple purpose projects as determined by applying the Alternative Justifiable Expenditure (AJE) method described in the CG series. Multiple purpose projects that combine wastewater treatment with recreation do not need to use the AJE method, but can be funded at the level of the most cost-effective single-purpose alternative.

g. Costs of grantee employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Regional Administrator.

2. Unallowable costs include:

a. Ordinary operating expenses of the grantee including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.

b. Preparation of applications and permits required by Federal, State or local regulations or procedures.

c. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

d. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.

e. The costs of replacing, through reconstruction or substitution, a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84-660), or its amendments, and that fails to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation. This provision does not apply to an innovative and alternative treatment works eligible for funding under §35.2032(c) or a treatment works that fails at the end of its design life or to a failed rotating biological contactor eligible for funding under §35.2035.

f. Personal injury compensation or damages arising out of the project.

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g. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures.

h. Costs outside the scope of the approved project.

i. Costs for which grant payment has been or will be received from another Federal agency.

j. Costs of treatment works for control of pollutant discharges from a separate storm sewer system.

k. The cost of treatment works that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains.

l. The costs of preparing a corrective action report required by §35.2218(c).

1. Design/Build Project Grants

1. Allowable costs include:

a. The costs of supplementing the facilities plan to prepare the pre-bid package including the cost of preliminary boring and site plans, concept and layout drawings, schematic, general material and major equipment lists and specifications, instructions to builders, general and special conditions, project performance standards and permit limits, applicable State or other design standards, any requirements to go into bid analyses, and other contract documents, schedules, forms and certificates.

b. The costs for building the project, including:

(1) Project costs based on the lowest responsive, responsible competitive design/build project bid.

(2) Construction management services including detailed plans and specifications review and approval, change order review and approval, resident inspection, shop drawing approval and preparation of an O & M manual and of user charge and sewer use ordinance systems.

(3) Any adjustments to reflect the actual reasonable and necessary costs for preparing the pre-bid package.

(4) Post-construction activities required by project performance certification requirements.

(5) Contract and project administration activities including the review of contractor vouchers and payment requests, preparation of monitoring reports, grant administration and accounting services, routine legal costs, cost of eligible real property.

(6) Contingencies.

2. Unallowable costs include:

a. All costs in excess of the maximum agreed Federal share.

b. Costs of facilities planning where the grantee has received a Step 1 grant.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45896, Nov. 4, 1985; 55 FR 27098, June 29, 1990]

**APPENDIX B TO SUBPART I OF PART 35—
ALLOWANCE FOR FACILITIES PLANNING AND DESIGN**

1. This appendix provides the method EPA will use to determine both the estimated and the final allowance under §35.2025 for facilities planning and design. The Step 2+3, Step 3 and Step 7 grant agreements will include an estimate of the allowance.

2. The Federal share of the allowance is determined by applying the applicable grant percentage in §35.2152 to the allowance.

3. The allowance is not intended to reimburse the grantee for costs actually incurred for facilities planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e., reimbursement on a dollar-for-dollar basis) will not be appropriate.

4. The estimated and final allowance will be determined in accordance with this appendix and tables 1, 2 and 3. Table 2 is to be used in the event the grantee received a grant for facilities planning. Table 3 is to be used to determine the facilities planning allowance for a Step 7 grant if the grantee did not receive a Step 1 grant. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

5. The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending a treatment works, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

a. The initial award amount of all prime subagreements for building the project.

b. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.

c. The purchase price of eligible real property.

6. The estimated allowance is to be based on the estimate of the initial allowable building cost.

7. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

8. For a Step 3 or Step 7 project, the grantee may request payment of 50 percent of the Federal share of the estimated allowance immediately after grant award. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

9. For a Step 2+3 project, if the grantee has not received a grant for facilities planning,

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the grantee may request payment of 30 percent of the Federal share of the estimated allowance immediately after the grant award. Half of the remaining estimated allowance may be requested when design of the project is 50 percent complete. If the grantee has received a grant for facilities planning, the grantee may request half of the Federal share of the estimated allowance when design of the project is 50 percent complete. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

10. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and 40 CFR part 33.

11. The State will determine the amount and conditions of any advance under § 35.2025(b), not to exceed the Federal share of the estimated allowance.

12. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee received under § 35.2025(b).

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost	Allowance as a percentage of building cost*
\$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN—Continued

Building cost	Allowance as a percentage of building cost*
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
200,000,000	4.7894

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

*Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

Building cost	Allowance as a percentage of building cost*
\$100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314

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TABLE 2—ALLOWANCE FOR DESIGN ONLY—
Continued

Building cost	Allowance as a percentage of building cost*
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

*Interpolate between values.

TABLE 3—ALLOWANCE FOR FACILITIES PLANNING
FOR DESIGN/BUILD PROJECTS

Building cost (dollars)	Allowance as a percentage of building cost*
100,000 or less	5.9262
120,000	5.7337
150,000	5.5061
175,000	5.3538
200,000	5.2250
250,000	5.0163
300,000	4.8516
350,000	4.7162
400,000	4.6019
500,000	4.4164
600,000	4.2701
700,000	4.1499
800,000	4.0483
900,000	3.9606
1,000,000	3.8837
1,200,000	3.7538
1,500,000	3.6003
1,750,000	3.4976
2,000,000	3.4109
2,500,000	3.2703
3,000,000	3.1595
3,500,000	3.0684
4,000,000	2.9915
5,000,000	2.8669
6,000,000	2.7686
7,000,000	2.6880
8,000,000	2.6198

NOTE: Building cost is the sum of the allowable cost of (1) the initial award amount of the prime subagreement for building and designing the project; and (2) the purchase price of eligible real property.

*Interpolate between values.

[49 FR 6234, Feb. 17, 1984, as amended at 55 FR 27098, June 29, 1990]

**Subpart J—Construction Grants
Program Delegation to States**

AUTHORITY: Sections 205(g) and 518(e) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et. seq.*

SOURCE: 48 FR 37818, Aug. 19, 1983, unless otherwise noted.

§ 35.3000 Purpose.

(a) This regulation establishes policies and procedures for the development, management, and EPA overview of State administration of the wastewater treatment works construction grants program under section 205(g) of the Clean Water Act, as amended. The delegation agreement between EPA and the State is a precondition for construction management assistance under section 205(g). Program requirements for other assistance agreements authorized by section 205(g) for activities under sections 402 and 404 and section 208(b)(4) are provided in part 130. Administration of all section 205(g) assistance agreements follows the procedures established in subpart A of this part.

(b) A State, for purposes of receiving delegation of construction grant program responsibilities under this subpart, shall include a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands (Palau), the Commonwealth of the Northern Marianas, and any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation, provided that the Tribe satisfies the following criteria:

(1) The Indian Tribe has a governing body carrying out substantial governmental duties and powers. The Tribe must submit a narrative statement to the Regional Administrator describing the form of the Tribal government, describing the types of essential governmental functions currently performed and identifying the source of the authority to perform these functions.

(2) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation. Assertions by the Indian Tribe with respect to this